

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA)	JUDGE DONALD C. NUGENT
)	
Plaintiff,)	CASE NO.1:06 CR 416
)	
)	
vs.)	<u>MEMORANDUM OPINION</u>
)	
LESEAN ROBERTS,)	
)	
Defendant.)	

This matter is before the Court on Defendant Lesean Roberts' Motion for Appointment of Counsel. (ECF #116). Mr. Roberts states that he is indigent and asks the Court to appoint counsel to represent him for purposes of preparing a motion for new trial pursuant to Fed. R. Crim. Pro. 33. The government opposes Mr. Roberts' request. (ECF #118).

FACTS¹

In March of 2007, the Defendant was tried and convicted of one count of distributing 50 grams or more of cocaine base (crack) in violation of 21 U.S.C. §§841(a)(1) and (b)(1)(A)(iii), and one count of possessing with intent to distribute approximately 20 grams or more of cocaine

¹

The facts have been taken from the Government's Response in Opposition to Defendant's Motion for Appointment of Counsel, and verified by a review of the relevant documents on the Court's docket. Mr. Roberts has not disputed any of these procedural facts.

base (crack) and approximately 196 grams of cocaine hydrochloride (powder cocaine) in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B)(iii). (ECF #73). The Court sentenced Defendant to life imprisonment on Count One and to a term of ten years on Count Two, the sentences to run concurrently. (ECF #82). Mr. Roberts, with the assistance of Court appointed counsel, filed an appeal of his conviction. (ECF #83). During the pendency of the appeal Mr. Roberts retained his own lawyer and the appointed counsel withdrew from the case. (ECF #100). The Sixth Circuit affirmed the conviction, and the Supreme Court of the United States has denied certiorari. (ECF #106, 115). Mr. Roberts now seeks appointed counsel to represent him on a post-conviction, post-appeal motion for new trial.

ANALYSIS

As stated in the government's response, the first, second, eleventh, and D.C. districts have specifically held that there is no Sixth Amendment right to counsel on a post-appeal motion for a new trial. *United States v. Tajeddini*, 945 F.2d 458, 470 (1st Cir.1991); *United States v. Birrell*, 482 F.2d 890, 892 (2d Cir.1973); *United States v. Lee*, 513 F.2d 423, 424 (D.C.Cir.1975). In fact, the United States Supreme Court has held that the right to appointed counsel extends to only the first appeal of right, and a defendant has no federal constitutional right to counsel when pursuing a discretionary appeal. *Ross v. Moffitt*, 417 U.S. 600, 94 S.Ct. 2437, 41 L.Ed.2d 341. Because a delayed Rule 33 motion for new trial is a collateral challenge separate from a direct appeal (*Johnson v. United States*, 246 F.3d 655, 58(6th Cir. 2001)), and because a petitioner has no right to counsel when making a post-conviction attack on a conviction that has become final upon exhaustion of the appellate process (*Pennsylvania v. Finley*, 481 U.S. 551, 107 S.Ct. 1990, 1991

(1987)), Mr. Roberts has no constitutional right to counsel for his post-conviction, post-appeal motion for new trial.

Although not required, the Court could still use its discretion to appoint counsel for post-conviction proceedings of this kind. Under the circumstances, however, the Court finds that the appointment of counsel is not warranted. The post-conviction issues appear to be straightforward and direct and Mr. Roberts has not demonstrated that his Rule 33 motion will be unusually complex. Further, throughout this case, Mr. Roberts has written coherent and logical pleadings that reflect more than a sufficient level of understanding and expertise to pursue his claims without the assistance of appointed counsel. The Court sees no reason to justify the appointment of counsel at government expense.

CONCLUSION

For all of the reasons set forth above, the Defendant's Motion for Appointment of Counsel is DENIED. IT IS SO ORDERED.

/s/ Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: November 19, 2009